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JUL 2 2 2008

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA ROANOKE DIVISION

JOHN BY:	F. CORCORAN. CLERK

DAVID TERRY KIDD, JR.,		
)	Civil	Action No. 7:08CV00335
Petitioner,		
)	<u>MEN</u>	MORANDUM OPINION
v.)		
)		
COMMONWEALTH OF VIRGINIA, et al.,)	By:	Hon. Glen E. Conrad
)		United States District Judge
Respondents.		

David Terry Kidd, Jr., Virginia inmate number 160880, has submitted to the court a pro se petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254. However, court records and documents petitioner has submitted in support of his petition indicate that petitioner has previously filed a § 2254 petition concerning the same conviction. See Civil Action No. 2:01-cv-00210 (E.D. Va. November 2, 2001), certificate of appealability denied and appeal dismissed by Case No. 01-8064 (4th Cir. May 20, 2002). Thus, petitioner's current petition is a subsequent one, falling under the successive petition provisions of the federal habeas statutes in 28 U.S.C. § 2244(b). Pursuant to this section, a federal district court may consider a second or successive § 2254 petition only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the petition meet certain criteria. § 2244(b). Because petitioner has not submitted any evidence that he has obtained such certification by the Court of Appeals, the court will dismiss the petition without prejudice as successive.*

^{*} Although petitioner states that he currently has a request for certification to file a subsequent petition pending at the United States Court of Appeals for the Fourth Circuit, petitioner is advised that a Fourth Circuit form and instructions for filing a request for certification to file a subsequent petition are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.

The Clerk is directed to send copies of this memorandum opinion and the accompanying order to petitioner.

ENTER: This ______ day of July, 2008.

United States District Judge